IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

SHARON METZ,	CV 05-58-BU-CSO
Plaintiff,	
vs.	**ORDER**
FLYING J, INC., a Utah Corporation,	
Defendant.	

On November 28, 2006, a hearing was held on Defendant Flying J, Inc.'s ("Flying J") Motion to Compel and for Sanctions and Plaintiff Sharon Metz's ("Metz") Motion Requesting the Court to Deny Defendant's Flying J's Motion to Compel and for Sanctions. Metz was represented by Michael J. McKeon. Flying J was represented by Jean E. Faure.

Having reviewed the written submissions of the parties and having heard oral argument, the Court at the hearing issued an oral ruling on the record. This oral ruling is confirmed in this Order.

Accordingly, **IT IS HEREBY ORDERED** as follows:

(1) Flying J's Motion to Compel and for Sanctions (*Court's Doc. No. 33*) is **GRANTED in part** and **DENIED in part** as follows:

-1-

(a) Flying J may reopen the deposition of Metz. Metz, however, will not be required to pay any costs or attorney's fees incurred in reopening the deposition.

(b) Pursuant to Fed. R. Civ. P. 37(a)(4), Metz shall pay the reasonable costs and attorney's fees necessarily incurred by Flying J in the making of its motion to compel. See Marquis v. Chrysler Corp., 577 F.2d 624, 641-42 (9th Cir. 1978); Green v. Baca, 225 F.R.D. 612, 614 (C.D. Cal. 2005).

(c) Counsel for the parties shall attempt to workout a reasonable accommodation for payment of Flying J's costs and attorney's fees. If counsel cannot agree, Flying J shall file an affidavit setting forth its reasonable expenses necessarily incurred in filing the motion to compel on or before **December 15, 2006**. Metz may file a response thereto on or before **December 22, 2006**.

(2) Metz's Motion Requesting the Court to Deny Defendant's Flying J's Motion to Compel and for Sanctions (*Court's Doc. No. 36*) is **DENIED.**

DONE and DATED this 29th day of November, 2006.

/S/ Carolyn S. Ostby
Carolyn S. Ostby
United States Magistrate Judge

-2-